



[6450-01-P]

DEPARTMENT OF ENERGY

**10 CFR Parts 207, 218, 429, 431, 490, 501, 601,
820, 824, 851, 1013, 1017, and 1050**

RIN 1990-AA46

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy ("DOE") publishes this final rule to adjust DOE's civil monetary penalties ("CMPs") for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as "the Act"). This rule adjusts CMPs within the jurisdiction of DOE to the maximum amount required by the Act.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE
FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Preeti Chaudhari, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-8078.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Method of Calculation
- III. Summary of Final Rule
- IV. Final Rulemaking

V. Regulatory Review

I. Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (“the Inflation Adjustment Act”), as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Public Law 114-74) (“the 2015 Act”), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act requires agencies to adjust the level of CMPs with an initial “catch-up” adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation, notwithstanding 5 U.S.C. 553. DOE’s initial catch-up adjustment interim final rule was published June 28, 2016 (81 FR 41790). DOE received no public comments in response to the interim final rule. The interim final rule is today adopted as final without amendment. The 2015 Act also provides that any increase in a CMP shall apply only to CMPs, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.

In accordance with the 2015 Act, OMB issued a guidance memorandum on the implementation of the 2017 annual adjustment pursuant to the 2015 Act.¹ This final rule is issued in accordance with applicable law and the OMB guidance memorandum.

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the 2015 Act. Under the 2015 Act, annual inflation adjustments subsequent to the

¹ The guidance memorandum was issued on December 16, 2016, provides the 2017 adjustment multiplier, and addresses how to apply it.

initial catch-up adjustment are to be based on the percent change between the October Consumer Price Index for all Urban Consumers (CPI-U) preceding the date of the adjustment, and the prior year's October CPI-U. Pursuant to the aforementioned OMB guidance memorandum, the adjustment multiplier for 2017 is 1.01636. In order to complete the 2017 annual adjustment, each CMP is multiplied by the 2017 adjustment multiplier. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of \$1.

III. Summary of the Final Rule

The following list summarizes DOE authorities containing CMPs, and the penalties before and after adjustment.

DOE Authority Containing Civil Monetary Penalty	Before Adjustment	After Adjustment
10 CFR 207.7	\$10,000	\$10,164
10 CFR 218.42	\$21,661	\$22,015
10 CFR 429.120	\$433	\$440
10 CFR 431.382	\$433	\$440
10 CFR 490.604	\$8,386	\$8,523
10 CFR 501.181	- \$88,613 - \$8/mcf - \$35/bbl	- \$90,063 - \$8/mcf - \$36/bbl
10 CFR 601.400 and App A	- minimum \$18,936 - maximum \$189,361	- minimum \$19,246 - maximum \$192,459
10 CFR 820.81	\$197,869	\$201,106
10 CFR 824.1 and App A	\$141,402	\$143,715
10 CFR 824.4 and App A	\$141,402	\$143,715
10 CFR 851.5 and App B	\$91,830	\$ 93,332
10 CFR 1013.3	\$10,781	\$10,957
10 CFR 1017.29	\$254,645	\$258,811
10 CFR 1050.303	\$19,305	\$19,621
50 U.S.C. 2731 ²	\$8,655	\$8,797

IV. Final Rulemaking

The 2015 Act requires that annual adjustments for inflation subsequent to the

² Implemented by 10 CFR 820.81, 10 CFR 851.5, and appendix B to 10 CFR part 851.

initial “catch-up” adjustment be made notwithstanding 5 U.S.C. 553.

V. Regulatory Review

A. Executive Order 12866

This rule has been determined not to be a significant regulatory action under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this final rule is covered under the Categorical Exclusion found in DOE’s National Environmental Policy Act regulations at paragraph A5 of Appendix A to Subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment. As discussed above, the 2015 Act requires that annual inflation adjustments subsequent to the initial catch-up adjustment be made notwithstanding 5 U.S.C. 553. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for this

final rule.

D. Paperwork Reduction Act

This final rule imposes no new information collection requirements subject to the Paperwork Reduction Act.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Section 201 excepts agencies from assessing effects on State, local or tribal governments or the private sector of rules that incorporate requirements specifically set forth in law. Because this rule incorporates requirements specifically set forth in 28 U.S.C. 2461 note, DOE is not required to assess its regulatory effects under Section 201. Unfunded Mandates Reform Act sections 202 and 205 do not apply to today's action because they apply only to rules for which a general notice of proposed rulemaking is published. Nevertheless, DOE has determined that this regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the public sector.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the

retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or

use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of this final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 801(2).

L. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 207

Administrative practice and procedure, Energy, Penalties.

10 CFR Part 218

Administrative practice and procedure, Penalties, Petroleum allocation.

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practices and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

10 CFR Part 490

Administrative practice and procedure, Energy conservation, Penalties.

10 CFR Part 501

Administrative practice and procedure, Electric power plants, Energy conservation, Natural gas, Petroleum.

10 CFR Part 601

Government contracts, Grant programs, Loan programs, Penalties.

10 CFR Part 820

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

10 CFR Part 824

Government contracts, Nuclear materials, Penalties, Security measures.

10 CFR Part 851

Civil penalty, Hazardous substances, Occupational safety and health, Safety, Reporting and recordkeeping requirements.

10 CFR Part 1013

Administrative practice and procedure, Claims, Fraud, Penalties.

10 CFR Part 1017

Administrative practice and procedure, Government contracts, National Defense, Nuclear Energy, Penalties, Security measures.

10 CFR Part 1050

Decorations, medals, awards, Foreign relations, Government employees, Government property, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 20, 2016

Steven Croley
General Counsel

For the reasons set forth in the preamble, DOE amends chapters II, III, and X of title 10 of the Code of Federal Regulations as set forth below.

PART 207—COLLECTION OF INFORMATION

1. The authority citation for part 207 continues to read as follows:

Authority: 15 U.S.C. 787 *et seq.*; 15 U.S.C. 791 *et seq.*; E.O. 11790, 39 FR 23185; 28 U.S.C. 2461 note.

2. Section 207.7 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

§ 207.7 Sanctions.

* * * * *

(c) * * * (1) Any person who violates any provision of this subpart or any order issued

pursuant thereto shall be subject to a civil penalty of not more than \$10,164 for each violation. * * *

* * * * *

PART 218--STANDBY MANDATORY INTERNATIONAL OIL ALLOCATION

3. The authority citation for part 218 continues to read as follows:

Authority: 15 U.S.C. 751 *et seq.*; 15 U.S.C. 787 *et seq.*; 42 U.S.C. 6201 *et seq.*; 42 U.S.C. 7101 *et seq.*; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

4. Section 218.42 is amended by revising paragraph (b)(1) to read as follows:

§ 218.42 Sanctions.

* * * * *

(b) * * * (1) Any person who violates any provision of this part 218 or any order issued pursuant thereto shall be subject to a civil penalty of not more than \$22,015 for each violation.

* * * * *

**PART 429-- CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR
CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL
EQUIPMENT**

5. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291-6317; 28 U.S.C. 2461 note.

6. Section 429.120 is amended by revising the first sentence to read as follows:

§ 429.120 Maximum civil penalty.

Any person who knowingly violates any provision of §429.102(a) may be subject to assessment of a civil penalty of no more than \$440 for each violation. * * *

**PART 431--ENERGY EFFICIENCY PROGRAM FOR CERTAIN
COMMERCIAL AND INDUSTRIAL EQUIPMENT**

7. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291-6317; 28 U.S.C. 2461 note.

8. Section 431.382 is amended by revising paragraph (b) to read as follows:

§ 431.382 Prohibited acts.

* * * * *

(b) In accordance with sections 333 and 345 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than \$440 for each violation.

* * * * *

PART 490--ALTERNATIVE FUEL TRANSPORTATION PROGRAM

9. The authority citation for part 490 continues to read as follows:

Authority: 42 U.S.C. 7191 *et seq.*; 42 U.S.C. 13201, 13211, 13220, 13251 *et seq.*; 28 U.S.C. 2461 note.

10. Section 490.604 is amended by revising paragraph (a) to read as follows:

§ 490.604 Penalties and Fines.

(a) Civil Penalties. Whoever violates § 490.603 of this part shall be subject to a civil

penalty of not more than \$8,523 for each violation.

* * * * *

PART 501--ADMINISTRATIVE PROCEDURES AND SANCTIONS

11. The authority citation for part 501 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 8301 *et seq.*; 42 U.S.C. 8701 *et seq.*; E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

12. Section 501.181 is amended by revising paragraph (c)(1) to read as follows:

§ 501.181 Sanctions.

* * * * *

(c) * * * (1) Any person who violates any provisions of the Act (other than section 402) or any rule or order thereunder will be subject to the following civil penalty, which may not exceed \$90,063 for each violation: Any person who operates a powerplant or major fuel burning installation under an exemption, during any 12-calendar-month period, in excess of that authorized in such exemption will be assessed a civil penalty of up to \$8 for each MCF of natural gas or up to \$36 for each barrel of oil used in excess of that authorized in the exemption.

* * * * *

PART 601--NEW RESTRICTIONS ON LOBBYING

13. The authority citation for part 601 continues to read as follows:

Authority: 31 U.S.C. 1352; 42 U.S.C. 7254 and 7256; 31 U.S.C. 6301–6308; 28 U.S.C. 2461 note.

14. Section 601.400 is amended by revising paragraphs (a), (b) and (e) to read as follows:

§ 601.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than \$19,246 and not more than \$192,459 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B to this part) to be filed or amended if required herein, shall be subject to a civil penalty of not less than \$19,246 and not more than \$192,459 for each such failure.

* * * * *

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of \$19,246, absent aggravating circumstances. Second and subsequent offenses

by persons shall be subject to an appropriate civil penalty between \$19,246 and \$192,459, as determined by the agency head or his or her designee.

* * * * *

15. Appendix A to part 601 is amended by:

a. Revising the last sentence of the second undesignated paragraph, in paragraph (3) of the section entitled, “Certification for Contracts, Grants, Loans, and Cooperative Agreements”; and

b. Revising the last sentence of the third undesignated paragraph, in the section entitled, “Statement for Loan Guarantees and Loan Insurance”.

The revisions read as follows:

Appendix A to Part 601 – Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

* * * * *

(3) * * *

* * * Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$19,246 and not more than \$192,459 for each such failure.

Statement for Loan Guarantees and Loan Insurance

* * * * *

* * * Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$19,246 and not more than \$192,459 for each such failure.

PART 820--PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

16. The authority citation for part 820 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282(a); 7191; 28 U.S.C. 2461 note; 50 U.S.C. 2410.

17. Section 820.81 is amended by revising the first sentence to read as follows:

§ 820.81 Amount of penalty.

Any person subject to a penalty under 42 U.S.C. 2282a shall be subject to a civil penalty in an amount not to exceed \$201,106 for each such violation. * * *

PART 824--PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

18. The authority citation for part 824 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282b, 7101 *et seq.*, 50 U.S.C. 2401 *et seq.*; 28 U.S.C. 2461 note.

19. Section 824.1 is amended by revising the second sentence to read as follows:

§ 824.1 Purpose and scope.

* * * Subsection a. provides that any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates (or whose employee violates) any applicable rule, regulation or order under the Act relating to the security or safeguarding of Restricted Data or other classified information, shall be subject to a civil penalty not to exceed \$143,715 for each violation.

* * *

20. Section 824.4 is amended by revising paragraph (c) to read as follows:

§ 824.4 Civil penalties.

* * * * *

(c) The Director may propose imposition of a civil penalty for violation of a requirement of a regulation or rule under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed \$143,715 for each violation.

* * * * *

PART 851-- WORKER SAFETY AND HEALTH PROGRAM

21. The authority citation for part 851 continues to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 28 U.S.C. 2461 note.

22. Section 851.5 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 851.5 Enforcement.

(a) A contractor that is indemnified under section 170d. of the AEA (or any subcontractor or supplier thereto) and that violates (or whose employee violates) any requirement of this part shall be subject to a civil penalty of up to \$93,332 for each such violation. * * *

* * * * *

23. Appendix B to part 851 is amended by:

- a. Revising the last sentences of paragraphs (b)(1) and (2) in section VI; and
- b. Revising paragraph 1.(e)(1) in section IX.

The revisions read as follows:

Appendix B to Part 851— General Statement of Enforcement Policy

* * * * *

VI. Severity of Violations

* * * * *

(b) * * *

(1) * * * A Severity Level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty of \$93,332.

(2) * * * A Severity Level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty (\$46,666).

* * * * *

IX. Enforcement Actions

* * * * *

I. Notice of Violation

* * * * *

(e) * * *

(1) DOE may assess civil penalties of up to \$93,332 per violation per day on contractors (and their subcontractors and suppliers) that are indemnified by the Price-Anderson Act, 42 U.S.C. 2210(d). *See* 10 CFR 851.5(a).

* * * * *

PART 1013--PROGRAM FRAUD CIVIL REMEDIES AND PROCEDURES

24. The authority citation for part 1013 continues to reads as follows:

Authority: 31 U.S.C. 3801–3812; 28 U.S.C. 2461 note.

25. Section 1013.3 is amended by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 1013.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$10,957 for each such claim.

* * * * *

(b) * * *

(1) * * *

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than \$10,957 for each such statement.

* * * * *

PART 1017--IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

26. The authority citation for part 1017 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 42 U.S.C. 2168; 28 U.S.C.

2461 note.

27. Section 1017.29 is amended by revising paragraph (c) to read as follows:

§1017.29 Civil penalty.

* * * * *

(c) *Amount of penalty.* The Director may propose imposition of a civil penalty for violation of a requirement of a regulation under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed \$258,811 for each violation.

* * * * *

PART 1050--FOREIGN GIFTS AND DECORATIONS

28. The authority citation for part 1050 continues to read as follows:

Authority: The Constitution of the United States, Article I, Section 9; 5 U.S.C. 7342; 22 U.S.C. 2694; 42 U.S.C. 7254 and 7262; 28 U.S.C. 2461 note.

29. Section 1050.303 is amended by revising the last sentence in paragraph (d) to read as follows:

§1050.303 Enforcement.

* * * * *

(d) * * * The court in which such action is brought may assess a civil penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus \$19,621.

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